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EXAMINER

PIERCE, WILLIAM M

ART UNIT	PAPER NUMBER
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3711

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GROUP 3700

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 09/909,737
Filing Date: July 19, 2001
Appellant(s): GLASER, TRACY

Kevin Russell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/7/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

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(3) Status of Claims

The statement of the status of the claims contained in the brief is substantially correct.

With respect to claims 34-41, the examiner has not sustained the grounds for rejection on these claims for the purposes of this appeal. These claims call for a "care giver" to supplement the created psychological profile of the child which is used to modify the scenario of the game.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct.

With respect to claims 34-41, the examiner has not sustained the grounds for rejection on these claims for the purposes of this appeal. These claims call for a "care giver" to supplement the created psychological profile of the child, which is used to modify the scenario of the game.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 23-27, 50-60 and 73-78 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,813,863

Sloane et al.

1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 23-27, 34-41, 50-60 and 73-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Sloane for the reasons set forth below in response to applicant's remarks.

Specifically and clearly Sloane shows "*said game obtaining the age...*" where the user is "researched for personal information...such details as age" (col. 7, ln. 18) and "*said game modifying said scenario...*" where such information is used to "tailor the system video/audio content" (ln. 21). With respect to claim 23, Sloane shows an interactive story telling system where a likeness of the user is placed into the adventure. As to paragraphs (a) and (b), Sloane discloses a game where personal information "such details as age" (col. 7, ln. 18) are obtained by "each user of the system...to input personal information" (ln. 23). This modifies his game scenario as required by paragraph (c) in order to "tailor the content" (ln. 33) to the individual users. Sloane clearly shows that "as an optional feature each user of the system can be prompted to input personal information...for use in initializing the...adventure" (col. 7, ln. 23). This input of personal information shown by Sloane is considered to clearly meet appellant's claim limitations of inputting age "*as a result of interaction with said game*".

Claims 24-27 remain rejected as being dependent from claim 23. The information required by Sloane, such as age, race and etc. is considered to be criteria for a psychological profile as called for in the claims.

As to claim 50, Sloane shows the use of "graphical representation" such as "Hispanic female" (col. 7, ln. 27). Based upon this information, the scenario is modified for that particular user. Sloane shows a "psychological profile" in the creation of his "virtual character" (col. 7, ln. 8) based on "personal information (ln. 23).

Claims 51-60 depend from claim 50 and are not considered patentable for the same reasons as claim 50. These claims further recite the type of information that is requested of the user that is to be used to modify the scenario. Sloane requests the information recited in these claims from the users of his invention at col. 7, lns. 10-30.

As to claim 73, it calls for "at least one of...a video company". Sloane show "audio-visual subject matter presented to the user" (4th to last ln. of abstract). Based upon the information obtained from the user, a video is provided as called for in the claim.

Claims 74-78 depend from claim 73 and are not considered patentable for the same reasons as claim 73.

Sloane shows a "psychological profile" in the creation of his "virtual character" (col. 7, ln. 8) based on "personal information (ln. 23). Included in this are psychological attributes such as "shy", "self esteem" or "nightmares" as shown at the bottom of fig. 1.

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(11) Response to Argument

GROUP I Appellant summarizes his interpretation of Sloane and offers, in the middle of pg. 8, disagrees with examiners interpretation as to how he meets the limitations recited in the claims. Particularly, appellant feels that the limitation of *"said game obtaining the age for a particular one of said children as a result of interaction with said game"* and *"said game modifying said scenario based on said respective ages"* is not met by examiner's interpretation of Sloane at col. 7, lns 18-33. Specifically and clearly Sloane shows *"said game obtaining the age..."* where the user is "researched for personal information...such details as age" (col. 7, ln. 18) and *"said game modifying said scenario..."* where such information is used to "tailor the system video/audio content" (ln. 21).

Appellant goes on at the bottom of pg. 8 to argue that Sloane *"does not disclose a game were 'said game obtains the age of a user 'as a result of interaction with said game"*. However, Sloane clearly shows that "as an optional feature each user of the system can be prompted to input personal information...for use in initializing the...adventure" (col. 7, ln. 23). This input of personal information shown by Sloane is considered to clearly meet appellant's claim limitations of inputting age *"as a result of interaction with said game"*. Hence, Sloane shows way more than merely obtaining information before the game as believed by appellant and the claims should be affirmed as anticipated.

Appellant argues in the middle of pg. 9 that "Sloane does not indicate that the user's age is part of the information interactively prompted from the user". Appellant appears to acknowledge that Sloane does indeed interact with the user by prompting him to "input personal information" (col. 7, ln. 23). However, he believes that this does not include age. Examiner does not agree since Sloane defines what he considers as "personal information" at col. 7, ln. 19. Here he states that "personal information" is information that "may include such details as age". Hence, as shown here, appellant's claimed invention does not positively and distinctly distinguish over the applied art and the grounds for rejection should be affirmed.

In apparent contradiction to his previous arguments, appellant goes on to admit (pg. 10, ln. 8, brief) that in Sloane "the system's content may be modified after a particular, single user inputs personal information". He tries to distinguish his invention by arguing that Sloane only contemplates his game being played by a single user. In a general sense, the Board clearly realizes that applicant is not the inventor of games that can be played by two persons at the same time. However, more specifically, nowhere does Sloane only limit his invention to one single "user". On pg. 5, ln. 27, Sloane shows the use of "global (multiple-user) data" and refers to the user as "target audience" (col. 9, ln. 61). Sloane clearly recognizes the usage of his system by a plurality of users where he states

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that, "of course global usage tracking is not necessary or desirable in the CD_ROM implementation of the system because it is contemplated that a single-user will purchase and make private use of the system. Global data that spans multiple users...would be insignificant in this case". (col. 10, ln. 36). From lns. 45-51 Sloane shows where a plurality of users operate the system simultaneously over a wide area network or the internet (col. 12, ln. 67). Hence, "*a second particular one of said children*" interacting with the game via the internet is considered to meet the limitations of the claims.

GROUP II

As set forth above, the rejection of claim 34 and its dependant claims has not been sustained by the examiner and is considered moot for the purposes of this appeal.

GROUP III

As set forth in the grounds for rejection, Sloane shows a "psychological profile" in the creation of his "virtual character" (col. 7, ln. 8) based on "personal information (ln. 23). Sloane does "create a psychological profile. Turning to appellant's specification, the only meaning afforded "psychological profile" is "psychological characteristics of the child" (pg. 3, ln. 16, specification). Things requested of a user by Sloane such as age and race are considered psychological characteristic within the meaning of the scope of the claim. Appellant argues that not shown is a "graphical representation" in the game of Sloane. This is incorrect. Sloane is concerned with a "virtual character" in which the "user identifies with" ((ln. 8). The "program content" (ln. 24) is tailored "in accordance with the personal information". It appears that what is at issue here is what is meant by the term "*graphical representation*". In order to determine this one must turn to appellants specification. The only hint as to what is the intended meaning of a "*graphical representation*" is found at pg. 9, lns. 21-27 and fig. 2 as a "digital representation of a child". Taking a graphical representation to be as broad as any digital representation, one can see at col 8, ln. 7 that Sloane shows "digital video" and tailors the program content "in accordance with the personal information, e.g., if the user is a Hispanic female, the virtual character will be a Hispanic female..." (col 7, ln. 26). Hence, this tailoring of the character in the adventure to the likeness of the user and the use of digital video is considered to meet the limitations of "configuring a graphical representation of...one of said children" as is recited in the claim.

GROUP IV

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As to claim 73, it calls for forwarding the data to "at least one of...a video company" and "providing...a video.." Sloane shows creating data based upon the interaction of said child with the game in the tracking module 600 as called for in paragraph (a) of claim 73. This "data" is then forwarded to make "audio-visual subject matter" (col. 2, ln. 58) that is presented to the user. With respect to the recitation of the term "company", this is taken by broad definition to be any group of individuals that work with video. Hence, the limitation of Claim 73 are considered shown by Sloane and the ground for rejection should be affirmed.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

wp
October 30, 2003

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